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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1571

SALVATORE SARULLO, and
GARY M. SOLOMON,

Petitioners

versus

UNITED STATES OF AMERICA

MOTION FOR LEAVE TO FILE PETITION FOR REHEARING ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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BLEED

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I

Comes now the Petitioners, Salvatore Sarullo and Gary M. Solomon, through their undersigned attorneys of record, and respectfully moves this Honorable Court for leave to file a Petition for ReHearing on the Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit. In support thereof, the petitioners would show the following:

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II

That the Petition for Certiorari was denied on October 6, 1975. The Petition for ReHearing was prepared and printeded with all due diligence and mailed from Memphis, Tennessee airmail, special delivery at 2:35 P.M. on Octobr 30, 1975, said time being within the prescribed twenty-five (25) day time limit imposed by Rule 58. The petitioenrs attorneys were assured by the U. S. Postal Service that it would be delivered to the Supreme Court Clerk's Office no later than October 31, 1975 before the close of the business day and past experience lead petitioners attorneys to honestly believe that it would be received by the Supreme Court on October 31, 1975. However, the petition for rehearing was marked received by the Clerk's office on Saturday, November 1, 1975.

The petitioner's attorneys received the petition in the mail on November 5, 1975 with a cover letter dated November 3, 1975 from Mr. W. V. Gullickson, Assistant Clerk, stating that the last day to docket the Petition for ReHearing was October 31, 1975 and the petition would not be docketed.

The petitioner's attorneys acted with all due diligence and in good faith mailed said petition airmail, special delivery within the twenty-five (25) day time limit for filing same. The petition was printed, duly signed and contained the proper certificate of compliance with Rule 58 (2) as well as certificate of service on the Solicitor General. The correct number of copies was mailed.

That, to refuse to docket said petition for consideration because of the inefficiency and lack of diligence on the part of the U. S. Postal Service would be manifestly unfair to the petitioners especially since the petitioner's

attorneys acted with diligence and in good faith to fully comply with the spirit and intent of Rule 58.

That the Petition for ReHearing will be filed by air-mail, special delivery the same day this motion is granted and neither the petition nor this motion is made for purposes of delay, but, for good cause.

WEREFORE, The Petitioners Respectfully Moves:

1. That an order be entered allowing the filing of the Petition for ReHearing in this cause.

Respectfully submitted,

Edward W. Kuhn

Marvin Goff

F. P. Cribbs, Jr.

Phillip E. Kuhn

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STATE OF TENNESSEE:
COUNTY OF SHELBY:

I, Phillip E. Kuhn, being one of the attorneys of record for the petitioners, do hereby state to the best of my knowledge, information and belief the facts contained in this foregoing motion are true and correct.

Phillip E. Kuhn

Sworn to and subscribed before me this the _____ day of November, 1975.

NOTARY PUBLIC

My Commission Expires:

CERTIFICATE OF SERVICE

I, Edward W. Kuhn, being one of the attorneys for the petitioners, do hereby state that I have served three (3) copies of this Motion for Leave to File Petition for Re-Hearing on the Solicitor General of the United States, the Honorable Robert Bork, by placing same in the U. S. Mail, postage pre-paid, to his principle office in Washingon, D.C. on the day of November, 1975.

Edward W. Kuhn

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